

ORIGINAL

ENVER W. PAINTER, JR. 2525  
 Attorney at Law  
 1188 Bishop Street, Suite 2505  
 Honolulu, Hawaii 96813  
 Telephone: (808) 537-9777

FILED IN THE  
 UNITED STATES DISTRICT COURT  
 DISTRICT OF HAWAII

APR 12 2006

at 2 o'clock and 03 min. P.M. '06  
 SUE BEITIA, CLERK

Attorney for Plaintiff and  
 Counterclaim/Defendant  
 Carol J. Nelson and  
 Counterclaim/Defendant Michael Cetraro

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF HAWAII

CAROL J. NELSON,	)	Civil No. 01-00182 HG-LEK
vs.	)	PLAINTIFF'S RESPONSE TO
ALAN JONES; DOES 1-30,	)	DEFENDANT'S SUPPLEMENTAL
Defendants.	)	STATEMENT OF POSITION AS TO
	)	CLARIFICATION AS TO REMAINING
	)	PARTIES AND CLAIMS: and
	)	CERTIFICATE OF SERVICE
<hr/>		
ROBERT ALAN JONES, a Nevada	)	HEARING:
resident,	)	Date: February 24, 2006
vs.	)	Time: 10:00 a.m.
CAROL NELSON, a Hawaii	)	Judge: Helen Gilmore
resident, MICHAEL CETRARO,	)	
a Montana resident, CHARLES	)	JURY TRIAL: Tentative
HEAUKULANI, Esq., a Hawaii	)	Date: April 18, 2006
resident, ROBERT SHELBY,	)	
Esq., a Utah resident, MICHAEL	)	TRIAL JUDGE: Magistrate
BILANZICH, a Utah resident	)	Judge Kevin S. C. Chang

and JEFFREY GROSS, Esq., a )  
Utah resident, )  
Counterclaim )  
Defendants. )  
\_\_\_\_\_  
)

**PLAINTIFF'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL  
STATEMENT OF POSITION AS TO CLARIFICATION AS TO  
REMAINING PARTIES AND CLAIMS**

COME NOW Plaintiff/Counterclaim Defendant, Carol J. Nelson by and through their attorney, the undersigned, and hereby submits this Supplemental Memorandum in Response to Defendant/Counterclaimant, Robert Alan Jones's Supplemental Statement of Position as to Clarification as to Remaining Parties and Claims filed on March 10, 2006.

At the February 24, 2006 hearing on Defendant/Counterclaimant Jones' Motion for Clarification as to Remaining Parties and Claims, Jones argued his appeal in this case was from this Court's dismissal of his counterclaim as well as the granting of Nelson's motion for summary judgment on her affirmative claims regarding the subject property. Nelson argued that Jones did not appeal from the dismissal of his Counterclaim and that the Ninth Circuit vacated and remanded only that part of this Court's Judgment regarding Plaintiff Nelson's Complaint for possession (Count I) and declaratory relief (Count III) regarding the ownership of the subject condominium. Based upon the clear and unambiguous language of the Ninth

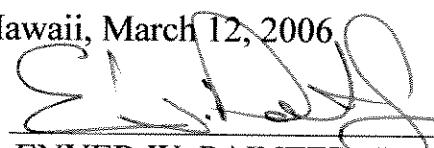
Circuit's Memorandum Opinion, the Court found that the Ninth Circuit vacated and remanded only "to the extent that" it perceived errors regarding this Court's ruling as to Count I and Count III of Nelson's complaint. However, as the briefs filed in the Ninth Circuit were not before this Court and might conceivably give some support to Jones position, the Court allowed Jones to review the appellate briefs and to advise the Court of any aspect of the appellate proceeding that Jones believed contradicted the Court's finding. The Court admonished Jones not to simply reargue his previous argument without support in the appellate record that the Ninth Circuit did more than vacate and remand as set forth in its Memorandum Opinion. The Court gave Jones until March 10, 2006 by which to review the appellate record and file his pleading in this Court. (See Minutes of February 24, 2006 hearing filed on February 24, 2006)

On March 10, 2006, Jones filed his pleading as above entitled and did exactly what this Court admonished he should not do. Apparently finding no support in the appellate record for his arguments that he appealed from the dismissal of his counterclaim or that the Ninth Circuit reversed this Court's dismissal of his counterclaim, Jones reverted to the same argument previously made and specifically rejected by this Court. In his March 10, 2006 pleading Jones argues that the Ninth Circuit vacated and remanded this Court's Judgment in its entirety "without limitation – i.e. in its entirety" and that the "language of any briefs, arguments, or

unreported or not published opinion is therefore of no effect." (See page 3 of Jones March 10, 2006 Supplemental Pleading)

As stated by Nelson in her previous opposition to Jones Motion for Clarification and as found by this Court at the February 24<sup>th</sup> hearing on same, the Ninth Circuit vacated and remand only "to the extent that" there were perceived errors in the granting of Nelson's motion for summary judgment as to Counts I and III of her Complaint. Jones did not appeal from the dismissal of his counterclaim and the Ninth Circuit therefore made no ruling regarding his counterclaim. This Court's dismissal of his counterclaim stands. It is therefore requested that this Court adhere to its February 24<sup>th</sup> finding and rule that neither Jones' counterclaim or counterclaim defendant Michael Cetraro are properly before this Court on remand and that this matter proceed to trial before a Magistrate Judge between Jones and Nelson on the issues of Jones' breach of the Agreement of Sale and the unenforceability of the Agreement of Sale for failure of consideration and condition precedent and any related issues as discussed at the hearing on February 24, 2006.

DATED: Honolulu, Hawaii, March 12, 2006



ENVER W. PAINTER, JR.

Attorney for Plaintiff/Counterclaim Defendant  
Carol J. Nelson and Counterclaim Defendant  
Michael Cetraro

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

CAROL J. NELSON,	)	Civil No. 01-00182 HG-LEK
	)	
Plaintiff,	)	
vs.	)	
	)	
ALAN JONES; DOES 1-30,	)	
	)	
Defendants.	)	
	)	
ROBERT ALAN JONES, a Nevada	)	
resident,	)	
	)	
Counterclaimant	)	
	)	
vs.	)	
	)	
CAROL NELSON, a Hawaii	)	CERTIFICATE OF SERVICE
resident, MICHAEL CETRARO,	)	
a Montana resident, CHARLES	)	
HEAUKULANI, Esq., a Hawaii	)	
resident, ROBERT SHELBY,	)	
Esq., a Utah resident, MICHAEL	)	
BILANZICH, a Utah resident	)	
and JEFFREY GROSS, Esq., a	)	
Utah resident,	)	
	)	
Counterclaim	)	
Defendants.	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that on the below date a true and correct copy of the

foregoing document was served upon the following individuals by depositing same in the United States mail, postage prepaid:

Robert E. Chapman  
Mary Martin  
Topa Tower, Suite 2100  
700 Bishop Street  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, March 12, 2006



ENVER W. PAINTER, JR.  
Attorney for Plaintiff/Counterclaim  
Defendant Carol J. Nelson and Counterclaim  
Defendant Michael Cetraro